CORPORATE GOVERNANCE AND ITS CHALLENGES IN INDIA

Dr. Mukesh Kumar Singh

Teacher, +2 Marwari High School, Darbhanga, Bihar- 846004 , India.

ABSTRACT

Good corporate governance is utmost crucial for the emerging countries as well as developed countries to achieve its economic goals. Here the developing countries market known as 'emerging markets', where the markets are more imperfect and suffer from greater informational deficits than markets in developed countries. It is very crucial for business entities to follow good corporate governance in the market for their success. "Improvement in corporate governance practices can improve the decision making process within and between a company's governing bodies, and should thus enhance the efficiency of the financial and business operations. Better corporate governance also leads to an improvement in the accountability system, minimizing the risk of fraud or self-dealing by company officers. An effective system of governance should help ensure compliance with applicable laws and regulations, and further, allow companies to avoid costly litigation". Through good corporate governance the emerging market can produce benefits, enhance the reputation of the organization and make it more attractive to customers, investors and suppliers.

KEYWORDS: corporate governance, company, practices, litigation and investors.

INTRODUCTION:
The rapid pace of globalization and liberalization compelled companies to have effective corporate governance strategy and to adopt improved standards of corporate governance to run their business. To minimize case of fraud, malpractices in companies and financial instability, both policy makers and business managers stressed the importance of improved standards of corporate governance. In international level. Organization for Economic Co-operation and Development (hereinafter 'OECD') and World Bank continuously worked upon for better corporate governance and adopted a set of principles to strengthen the structure of companies. Similarly, in India there were several reforms taken through a number of different paths from the Security and Exchange Board of India (hereinafter 'SEBI') and the Ministry of Corporate Affairs (hereinafter 'MCA'), Government of India to improve the corporate governance. Recently, Government passed the Companies Act, 2013 which is one of the steps to improve corporate governance in India. This paper focus on the new development and emergence of new Companies Act, 2013 and the good practices incorporated in this Act. But before that it is essential to understand Corporate Governance and its development.

Good corporate governance is utmost crucial for the emerging countries as well as developed countries to achieve its economic goals. Here the developing countries market known as 'emerging markets', where the markets are more imperfect and suffer from greater informational deficits than markets in developed countries. Bruner rightly said that "the developing countries' emerging markets are different from developed markets in areas such as accounting transparency, liquidity, corruption, volatility, governance, taxes and transaction costs. It is very crucial for business entities to follow good corporate governance in the market for their success. "Improvement in corporate governance practices can improve the decision making process within and between a company's governing bodies, and should thus enhance the efficiency of the financial and business operations. Better corporate governance also leads to an improvement in the accountability system, minimizing the risk of fraud or self-dealing by company officers. An effective system of governance should help ensure compliance with applicable laws and regulations, and further, allow companies to avoid costly litigation". Through good corporate governance the emerging market can produce benefits, enhance the reputation of the organization and make it more attractive to customers, investors and suppliers.

A corporation is a congregation of various stakeholders, namely customers, employees, investors, vendor partners, government and society. In this changed scenario an Indian corporation, as also a corporation elsewhere, should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where corporations need to access global pools of capital, need to attract and retain the best human capital from various parts of the world, need to partner with vendors on mega collaborations and need to live in harmony with the community. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed. Corporations need to recognize that their growth requires the cooperation of all the stakeholders; and such cooperation is enhanced by the corporations adhering to the best Corporate Governance practices.

Advantages of Good Corporate Governance:
The following are the main advantages of Good Corporate Governance:

- The first is the increased access to external financing by firms. This in turn can lead to larger investment, higher growth, and greater employment creation."
- It also accelerates better operational performance through better allocation of resources and better management which resulted into the creation of wealth in more efficiently.

- It decreases the cost of capital and associated higher firm valuation. This makes more investments attractive to investors, also leading to growth and more employment.
- Good corporate governance can be associated with a reduced risk of financial crises. This is particularly important, as financial crises can have large economic and social costs."
- Good corporate governance can generally improved relationships with all stakeholders in the corporations which also leads to the improving of social and labor relationships.
- Lastly, Good corporate governance also beneficial to the issues such as environmental protection and sustainable development.

Corporate Governance in India:
After the independence, particularly in 1950s and 1960s, the Tariff Commission and the Bureau of Industrial Costs and Prices were set up by the Government of India. Soon after the independence the Securities Contracts Regulation Act, 1956and the Companies Act, 1956 came into existence. During 1970s to 1980s, the banking institutions developed rapidly, as a result there were several laws and regulation framed to regulate these institutions. Particularly in 1990s, during the period of globalization, privatization and liberalization (LPG) one of the important developments took place in the field of corporate governance and investor protection by establishment of the Securities and Exchange Board of India (SEBI) in 1992. After liberalization privatization and globalization era, the persistent and persisting steps taken by the government of India and numerous leading organizations to have good corporate governance. According to Mr. Bajpai, then chairman of the SEBI, "the Securities and Exchange Board of India (SEBI) continues to raise the bar for good Corporate Governance." The first phase of India's corporate governance reforms were aimed at making boards and audit committees more independent, powerful and focused monitors of management as well as aiding shareholders, including institutional and foreign investors, in monitoring management. "The Confederation of Indian Industry (CII), in 1998 proposed basic code for corporate governance, which dealt with the laws, regulations, practices and implicit rules that determines a company's ability to take managerial decisions with shareholders and creditors and customers. In addition to this, the CII code emphasized on greater transparency in the listed company.

The concept of good governance is very old in India dating back to third century B.C. where Chanakya (Vazir of Parliputra) elaborated fourfold duties of a king viz. Raksha, Vriddhi, Palana and Yogakshema. Substituting the king of the State with the Company CEO or Board of Directors the principles of Corporate Governance refers to protecting shareholders wealth (Raksha), enhancing the wealth by proper utilization of assets (Vriddhi), maintenance of wealth through profitable ventures (Palana) and above all safeguarding the interests of the shareholders (Yogakshema or safeguard). Corporate Governance was not in agenda of

Indian Companies until early 1990s and no one would find much reference to this subject in book of law till then. In India, weakness in the system such as undesirable stock market practices, boards of directors without adequate fiduciary responsibilities, poor disclosure practices, lack of transparency and chronic capitalism were all crying for reforms and improved governance. The fiscal crisis of 1991 and resulting need to approach the IMF induced the Government to adopt reformative actions for economic stabilization through liberalization. The momentum gathered albeit slowly once the economy was pushed open and the liberalization process got initiated in early 1990s. As a part of liberalization process, in 1999 the Government amended the Companies Act, 1956. Further amendments have followed subsequently in the year 2000, 2002 and 2003.The major corporate governance initiatives launched in India since the mid 1990s.There are various reformswhich were channelled through a number of different pathswith both the Security and Exchange Board of India (SEBI)and the Ministry of Corporate Affairs, Government of India(MCA) playing important roles. A.Committee on Corporate Governance Reforming the Corporate Governance in India since 1990s.

Confederation of Indian Industries (CII):
The Confederaton of Indian Industries is set up a taskforce in 1995 under Rahul Bajaj, a reputedindustrialist. In April 1998, the CII released the code called"Desirable Corporate Governance". It looked intovarious aspects of Corporate Governance and wasfirst to criticize nominee directors and suggesteddilution of government stake in companies

Kumar Mangalam Birla Committee Report:
While the CII code was well received by corporate sector and some progressive companies also adopted it, it was felt that under Indian conditions a statutory rather than a voluntary code would be more meaningful. Consequently the second major initiative was undertaken by the Securities and Exchange Board of India (SEBI) which set up a committee under the chairmanship of Kumar Mangalam Birla in 1999 with the objective of promoting and raising of standards of good corporate governance. In early 2000 the SEBI Board accepted and ratified the key recommendations of this committee and these were incorporated into Clause – 49 of the Listing Agreement of the Stock Exchanges.

Department of Corporate Affairs (DCA):
In May 2000, the Department of Corporate Affairs (DCA) formed a broad based study group under the chairmanship of Dr. P.L. Sanjeev Reddy, Secretary of DCA. The group was given the ambitious task of examining ways to "operationalise the concept of corporate excellence on a sustained basis" so as to "sharpen India's global competitive edge and to further develop corporate culture in the country". In November 2000 the Task Force on Corporate Excellence set up by the group produced a report containing a range of recommendations for raising governance standards among all companies in India.

Naresh Chandra Committee Report:
A committee was appointed by Ministry of Finance and Company Affairs in August 2002 under the chairmanship of Naresh Chandra to examine and recommend inter alia amendments to the law involving the auditor-client relationships and the role of independent directors. The committee made recommendations in two key aspects of corporate governance: financial and non-financial disclosures: and independent auditing and board oversight of management.

Narayana Murthy Committee Report in 2002:
The SEBI constituted a committee under the chairmanship of Narayana Murthy for reviewing implementation of the corporate governance code by listed companies and issue of revised clause 49. Some of the major recommendations of the committee primarily related to audit committees, audit reports, independent directors, related party transactions, risk management, directorships and director compensation, codes of conduct and financial disclosures.

After liberalization serious efforts have been made towards overhauling the system with SEBI formulating the Clause 49 of the Listing Agreements dealing with corporate governance. Clause 49 of the Listing Agreement to the Indian stock exchange comes into effect from 31 December 2005. It includes the following key requirements:

- ***Board Independence:*** Boards of directors of listed companies must have a minimum number of independent directors.
- ***Audit Committees:*** Listed companies must have audit committees of the board with a minimum of three directors, two-thirds of whom must be independent.
- ***Disclosure:*** Listed companies must periodically make various disclosures regarding financial and other matters to ensure transparency.

J.J. Irani Committee Report:
The Companies Act 1956 was enacted on the recommendations of the Bhaba Committee set up in 1950 with the object to consolidate the existing corporate laws and to provide a new basis for corporate operation in independent India. With enactment of this legislation in 1956 the Companies Act 1913 was repealed. The need for streamlining this Act was felt from time to time as the corporate sector grew in pace with the Indian economy and as many as 24 amendments have taken place since 1956. The major amendments to the Act were made through Companies (Amendment) Act 1998 after considering the recommendations of Sachar Committee followed by further amendments in 1999, 2000, 2002 and finally in 2003 through the Companies (Amendment) Bill 2003 pursuant to the report of R.D. Joshi Committee. After a hesitant beginning in 1980, India took up its economic reforms programme in 1990s and a need was felt for a comprehensive review of the Companies Act 1956. The Government therefore took a fresh initiative in this regard and constituted a committee in December 2004 under the chairmanship of Dr. J.J. Irani with the task of advising the government on the proposed revisions to the Companies Act 1956.

Central Coordination and Monitoring Committee:
A high powered Central Coordination and Monitoring Committee (CCMC) co-chaired by Secretary, Department of Corporate Affairs' and Chairman, SEBI was set up by the Department of Corporate Affairs to monitor the action taken against the vanishing companies and unscrupulous promoters who misused the funds raised from the public. It was decided by this committee that seven Task Forces be set up at Mumbai, Delhi, Chennai, Kolkata, Ahmedabad, Bangalore and Hyderabad.

National Foundation of Corporate Governance:
Recently the Ministry of Company Affairs has set up National Foundation for Corporate Governance (NFCG) in association with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI).

Voluntary Guidelines issued by Ministry of Corporate Affairs:
Voluntary Guidelines on Corporate Governance were issued by the Ministry of Corporate Affairs in December 2009. Few guidelines are worth mentioning.

- The offices of chairman of the board and chief executive officer should be separate.
- The companies may have a Nomination Committee comprised of a majority of Independent Directors, including its Chairman.
- Independent Directors should not be paid with stock options or profit-based commission.
- The Board should provide training for the directors.
- The Audit Committee should be composed of at least three members, with Independent Directors in the majority and an Independent Director as the chair person.
- The audit partner should be rotated every three years; the firm should be rotated every five years.
- The Committee may appoint an internal auditor.

Ownership structure:
There are two sets of issues pertaining to the ownership structure of the listed companies in India. First, there is high concentration of ownership, which gives particular individuals or families actual or effective control of most companies, even publicly traded companies Second, a large number of companies in India are grouped together under the common control of a single shareholder or family.

Establishment of the NSE Centre for Excellence in Corporate Governance:
To encourage best standards of corporate governance among the Indian corporate and to keep them abreast of the emerging and existing issues, the NSE set up in December, 2012, a Centre for Excellence in Corporate Governance (NSE CECG). This is an independent expert advisory body comprising eminent domain experts, academics and practitioners.

Corporate Governance provisions in the Companies Act, 2013:
The enactment of the companies Act 2013 was major development in corporate governance in 2013. The new Act replaces the Companies Act, 1956 and aims to improve corporate governance standards, simplify regulations and enhance the interests of minority shareholders.

- ***Board of Directors (Clause 166):*** The new Act provides that the company can have a maximum of 15 directors on the Board;
- ***Independent Director (Clause 149):*** The concept of independent directors (IDs) has been introduced for the first time in the Company Law in India.
- ***Related Party Transactions (RPT) (Clause 188):*** The new Act requires that no company should enter into RPT contracts pertaining to sale, purchase or supply of any goods or materials
- ***Corporate Social Responsibility (CSR) (Clause 135):*** The new Act has mandated the profit making companies to spend on CSR related activi-

ties

- ***Auditors (Clause 139):*** A listed company cannot appoint or reappoint (a) an individual as auditor for more than one term of five consecutive years,

- ***Disclosure and Reporting (Clause 92):*** In the new Act, there is significant transformation in nonfinancial annual disclosures and reporting by companies as compared to the earlier format in the Companies Act, 1956.

- ***Class action suits (Clause 245):*** For the first time, a provision has been made for class action under which the order passed by the Tribunal shall be binding on all the stakeholders including the company and all its members, depositors and auditors.

REVIEW OF LITERATURE:

Review of related literature makes the investigator fully aware with the previous work that has been done. It also provides an opportunity of gaining insight into the method, measures, subject and approaches employed by the other researchers.

V. C. Joseph and L. N. (2003) The role of audit committee and its main function is to protect the auditor from dismissal in case of unfavorable report. Independent audit committee members experience a significant increase in turnover rate after auditor dismissals.

S. L. Gillan (2006) A corporate governance framework needs to be developed by providing a broad overview of recent corporate governance research. All aspects of corporate governance are important from board structure to ownership structure

M. Bhasin (2012) Good corporate governance practices help corporations and its stakeholders; to do so various audit committee mechanisms are required.

S. Claessens and B. Yurtoglu (2013) Research on corporate governance with respect to the emerging market in much needed. Various benefits of following better corporate governance practices are noticed.

OBJECTIVES:

The main objectives of this paper is based on following headings:

- To know the evolution of corporate governance.

- The Present paper is basically concerned with the Issues and Challenges for Corporate Governance in India.

- The paper also analyses regulatory deficiencies in corporate governance.

Methodology:

The paper design employed for the study is of descriptive type. Available secondary data have been broadly used for the study. Different news articles, Books and Web have been used which were enumerated and recorded.

Challenges of Corporate Governance in India:

- A corporation should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where corporations need to access global pools of capital, need to attract and retain the best human capital from various parts of the world. Unless a corporation embraces and demonstrates ethical conduct, it will not be able to succeed.

- What is “Corporate Governance” It is known fact that vital needs of success of any organization lingers on its ability to mobilize and utilize all kinds of resources to meet the objectives clearly set as part of the planning process.

- Corporate governance is about ethical conduct in business. Ethics is concerned with the code of values and principles that enables a person to choose between right and wrong. Further, ethical dilemmas arise from conflicting interests of the parties involved.

- It is quite possible that in the effort at arriving the best possible financial results or business results there could be attempts at doing things which are verging on the illegal or even illegal. There is also the possibility of grey areas where an act is not illegal but considered unethical. These raise moral issues.

- The rapid migration of four elements across national borders. These are (i) Physical capital in terms of plant and machinery; (ii) Financial capital; (iii) Technology; and (iv) Labour.

- Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection.

- Companies raise capital from market and investors suffered due to unscrupulous managements that performed much worse than past reported figures. Many corporate did not pay heed to investors' grievances

- The board of directors and the senior level management of an enterprise - walking their talk. It is by walking their talk that the top management can earn credibility. This also has a direct bearing on the morale of an organisation.

- When it comes to the hardware aspect of corporate governance, we go into the issue of a code, which becomes a reference point for behaviour. But the sad fact in our country is that even though there is a lot of talk about corporate governance, when it comes to reality, nothing much happens.

- In the Indian context lack of transparency that leads to corrupt or illegal behaviour.

- Perhaps the most important challenge we face towards better corporate governance is the mindset of the people and the organisational culture. This change will have to come from within.

- Another important aspect is to realise that ultimately the spirit of corporate governance is more important than the form. Substance is more important than style. Values are the essence of corporate governance and these will have to be clearly articulated and systems and procedures devised, so that these values are practiced.

- We then come to a common moral problem in running enterprises. One can have practices which are legal but which are unethical. In fact, many a time, tax planning exercises may border on the fine razor's edge between the strictly legal and the patently unethical.

- Openness, integrity and accountability are the key elements of Corporate Governance for any corporate entity. These factors assume greater importance in case of Public Sector Banks.

- Banks deal in trust. If trust is in suspicion, damaged or lost, the resulting financial loss cannot measure the true risk. Trust being the foundation of banking, the discussion over applicability of good governance has really been a non-issue

- The report of the Consultative Group of Directors of Banks/Financial Institutions – chaired by A.S. Ganguly has focussed on more fundamental issues like the supervisory role of boards of banks and financial institutions and functioning of the boards vis-à-vis compliance, transparency, disclosures, audit committees etc.

- Ethics in managing an organisation are vital for long term survival. As far as business ethics are concerned, a minimum code of ethics has to be practiced in competition, public relations and social responsibilities. Corporate Governance encourages ethical standards and sound business practices.

- Corporate governance extends beyond corporate law. Its objective is not mere fulfilment of legal requirements but ensuring commitment on managing transparently for maximising shareholder values.

- Finally, transparency about a company's governance process is critical. Implementing Corporate Governance structures are Important but instilling the right culture – work culture is Most Essential.

SUGGESTIONS:

- ***Value based corporate culture:*** For any organization to run in effective way, it needs to have certain ethics, values. Long run business needs to have based corporate culture. It is a set of beliefs, ethics, principles which are inviolable

- ***Holistic view:*** This holistic view is more or less godly, religious attitude which helps in running organization. It is not easier to adopt it, it needs special efforts and once adopted it leads to developing qualities of nobility, tolerance and empathy.

- ***Compliance with laws:*** Those companies abide and comply with laws of Securities Exchange Board of India (SEBI), Foreign Exchange Regulation Act, Competition Act 2002, Cyber Laws, Banking Laws etc.

- ***Disclosure, transparency, and accountability:*** Disclosure, transparency and accountability are important aspect for good governance. Timely and accurate information should be disclosed on the matters like the financial position, performance etc. Due to tremendous competition in the market place the customers having choices don't shift to other corporate bodies.

- ***Corporate Governance and Human Resource Management:*** For any corporate body, the employees and staff are just like family. For a company to be perfect the role of Human Resource Management becomes very vital, they both are directly linked. Every individual should be treated with individual

respect, his achievements should be recognized. Each individual staff and employee should be given best opportunities to prove their worth and these can be done by Human Resource Department.

- ***Innovation:*** Every Corporate body needs to take risk of innovation i.e. innovation in products, in services and it plays a pivotal role in corporate governance.

- ***Necessity of Judicial Reform:*** There is necessity of judicial reform for a good economy and also in today's changing time of globalization and liberalization. It needs to speedily resolve disputes in cost effective manner.

- ***Lessons from Corporate Failure:*** Every story has a moral to learn from, every failure has success to learn from, in the same way, corporate body have certain policies which if goes as a failure they need to learn from it. Failure can be both internal as well as external whatever it may be, in good governance, corporate bodies need to learn from their failures and need to move to the path of success.

- ***Independent directors-*** selection criteria must be transparent, also process of appointment of BOD must be reconsidered.

- It is important to focus on not just Quantity or profits but on the sustainability of business models.

- Need for having supervising the functions of management and make them accountable and transparent to shareholders.

- 12.Codes of conduct and whistle blower policies must be framed in such a way as to be possible to put in to practise.

- 13 Regulators should enhance penalities as well as to fix liability in imposing substantial penalties for non compliance,

CONCLUSION:

The concept of corporate governance hinges on total transparency, integrity and accountability of the management and the board of directors. Be it finance, taxation, banking or legal framework each and every place requires good corporate governance. Corporate governance and ethical behaviour have a number of advantages. Firstly, they help to build good brand image for the company. Once there is a brand image, there is greater loyalty, once there is greater loyalty, there is greater commitment to the employees, and when there is a commitment to employees, the employees will become more creative. In the current competitive environment, creativity is vital to get a competitive edge. Corporate Governance in the Public Sector cannot be avoided and for this reason it must be embraced. But Corporate Governance should be embraced because it has much to offer to the Public Sector. Corporate Governance is in its new form with many new visions for corporate. After the introduction of Companies Act 2013, Indian has really some of the best corporate governance laws. The new Companies Act 2013 introduced many significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. Also, new concepts such as one-person company, small companies, dormant company, class action suits, registered valuers and corporate social responsibility have been included. But it is only the corporate, how they are going to monitor and implement these new laws to improve their governance."

REFERENCES:

I. Bhasin, M. (2012) "Audit committee mechanism to improve corporate governance: Evidence from a developing country," Modern Economy, vol. 3, no. 7, pp. 856-872.

II. Claessens, S. & Yurtoglu, B (2013) "Corporate governance in emerging markets: A survey," Emerging Markets Review, pp. 151-33.

III. Gillan, S. L. (2006) "Recent developments in corporate governance: An overview," Journal of Corporate Finance, vol. 12, pp. 381-402.

IV. Joseph, V. C. & Terry, L. N. (2003) "Audit Committee Characteristics and Auditor Dismissals Following "New" Going-Concern Reports," The Accounting Review, vol. 78, no. 1, pp. 95-117.